

Grant L. Cartwright, Esq. (AZ Bar No. 030780)
Andrew A. Harnisch, Esq. (AZ Bar No. 024957)
MAY, POTENZA, BARAN & GILLESPIE, P.C.
201 N. Central Avenue, Suite 2200
Phoenix, AZ 85004-0608
Telephone: (602) 252-1900
Facsimile: (602) 252-1114
E-mail: gcartwright@maypotenza.com
aharnisch@maypotenza.com

Counsel for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re:

Chapter 11 Proceeding

ARCTIC CATERING, INC.

Case No. 2:18-blk-13118 EBB

Debtor.

**LIMITED OBJECTION TO
APPLICATION OF GORDON FOOD
SERVICE INC. FOR ALLOWANCE
AND PAYMENT OF
ADMINISTRATIVE CLAIM UNDER
11 U.S.C. § 503(b)(9)**

Hearing Date: Tuesday, March 12, 2019

**Hearing Time: 10:00 a.m.
Place: U.S. Bankruptcy Court
Courtroom 703
230 N. 1st Avenue
Phoenix, AZ 85003**

Arctic Catering, Inc. (the “**Debtor**”) hereby submits its limited objection to the *Application of Gordon Food Service Inc. for Allowance and Payment of Administrative Claim Under 11 U.S.C. § 503(b)(9)* (the “**Application**”) [DE 134].

The Debtor doesn't dispute that Gordon Food Service, Inc. ("Gordon Food") is entitled to an allowed administrative expense claim under Section¹ 503(b)(9) for goods delivered within 20 days prior to the Petition Date (the "**503(b)(9) Claim**"). For the avoidance of doubt, however, Debtor disputes any claim that Gordon Food is entitled to

¹ As used herein, “Section” refers to a section of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 *et seq.* (the “Bankruptcy Code”).

1 payment of its claim at the time of allowance by this Court, or that Gordon Food is entitled
2 to interest on its claim as requested in the Application.

3 The Debtor's position is supported by the specific sections of the Bankruptcy Code
4 and the case law cited below.

5 Section 503(b)(9) provides for an administrative-priority expense for goods
6 delivered within twenty days of the petition date. However, there is no temporal limitation
7 on the payment of such claim(s) in a Chapter 11 case so long as the Debtor pays all such
8 claims on or before the effective date of a confirmed plan of reorganization. *See* 11 U.S.C.
9 § 1129(a)(9).

10 The contrast between Section 503(b)(9) and Section 365(d)(3) further illustrates
11 that the Bankruptcy Code imposes no requirement on the timing of a debtor's payment of
12 an allowed Section 503(b)(9) claim. Section 365(d)(3) requires debtors, among other
13 things, to "timely" pay rent under unexpired non-residential real property leases. 11 U.S.C.
14 § 365(d)(3). Nevertheless, despite the Bankruptcy Code's **explicit** requirement to timely
15 pay rent under a lease, Courts have exercised their discretion to permit debtors to pay rent
16 later in the case. *See In re Orient River Invs., Inc.*, 112 B.R. 126, 133 (Bankr. E.D. Pa.
17 1990) (denying landlord's request for immediate payment of rent, irrespective of Section
18 365(d)(3)).

19 Unlike the special protections landlords receive in Section 365(d)(3), Congress
20 chose not to similarly enhance the rights of Section 503(b)(9) claimants. Put differently, if
21 Congress had intended to include a temporal requirement on payments to Section
22 503(b)(9) claimants, it would have.

23 Moreover, if Courts have exercised their discretion to deny landlords' requests for
24 immediate payment of Section 365(d)(3) claims – even when faced with a statutory timing
25 requirement – this Court should deny any request to direct the Debtor to pay 503(b)(9)
26 claims at any time before confirmation of a plan of reorganization.

27 Courts from jurisdictions around the country have held claimants with Section
28 503(b)(9) claims aren't entitled to immediate payment of their claims. *See, e.g., In re Arts*
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Dairy, LLC, 414 B.R. 219, 222 (Bankr. N.D. Ohio 2009) (sustaining objection of secured creditor on the request of a trade creditor to immediate payment of Section 503(b)(9) claim); *In re Bookbinders' Rests., Inc.*, No. 06-12302ELF, 2006 WL 3858020, at *3-5 (Bankr. E.D. Pa. Dec. 28, 2006) (denying request for immediate payment of allowed Section 503(b)(9) claim and overruling argument that claimant had right to be paid at same time as post-petition creditors being paid in the ordinary course under Section 363(c)(1)); *In re Global Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at *5 (Bankr. D. Del. Dec. 21, 2006) (weighing various factors and denying request for immediate payment).

In addition to its claim for good delivered within twenty days of the petition date, the Application also requests “appropriate interest” on its claim. Gordon Food does not cite to any authority for its claim to interest, and the Bankruptcy Code provides for no such relief. Therefore, the Court should also deny Gordon Food’s request for accrued and/or accruing interest on its claim.

WHEREFORE, the Debtor respectfully requests that this Court (1) grant Gordon Food an administrative expense claim in the amount of \$18,986.14 pursuant to Section 503(b)(9), (2) deny Gordon Foods's request for interest, and (3) if requested by Gordon Food, deny any request for immediate payment of the allowed 503(b)(9) Claim.

RESPECTFULLY SUBMITTED March 4th, 2019.

**MAY, POTENZA, BARAN & GILLESPIE,
P.C.**

By s/ Andrew A. Harnisch
Grant L. Cartwright
Andrew A. Harnisch
Counsel for Debtor

1 COPY of the foregoing mailed or emailed*
2 on March 4th, 2019, to:

3 Carolyn J. Johnsen*
4 DICKINSON WRIGHT PLLC
5 1850 N. Central Avenue, Suite 1400
6 Phoenix, AZ 85004
7 cjohnsen@dickinsonwright.com
8 *Attorneys for Liquid Capital Exchange, Inc.*

9 Michael R. King*
10 Kevin J. Blakley*
11 Gammage & Burnham P.L.C.
12 Two North Central Avenue, 15th Floor
13 Phoenix, Arizona 85004
14 mking@gblaw.com
15 kblakley@gblaw.com
16 *Attorneys for Food Services of America, Inc.*

17 Larry Watson*
18 Office of the U.S. Trustee
19 230 North First Avenue, Suite 204
20 Phoenix, Arizona 85003
21 Larry.Watson@usdoj.gov

22 Steven N. Berger*
23 ENGELMAN BERGER, P.C.
24 3636 North Central Avenue, Suite 700
25 Phoenix, Arizona 85012
26 snb@eblawyers.com
27 *Attorneys for Equity Holders*

28 Scott P. Vaughn*
29 McGuire Woods LLP
30 201 N. Tryon Street, Suite 3000
31 Charlotte, NC 28202
32 svaughn@mcguirewoods.com

33 Carl Doré, Jr.*
34 Doré Law Group, P.C.
35 17171 Park Row, Suite 160
36 Houston, Texas 77084
37 carl@dorelawgroup.net
38 *Attorneys for Stallion Rockies, Ltd.*

1 Jody Corrales*
2 DeConcini McDonald Yetwin & Lacy, P.C.
3 2525 E. Broadway Blvd., Ste. 200
4 Tucson, AZ 85716
5 jcorrales@dmyl.com
6 Attorneys for PJK Food Service LLC
5 d/b/a Keaney Produce & Gourmet

6 Steven D. Jerome*
7 Emily Gildar Wagner*
8 Snell & Wilmer, LLP
9 One Arizona Center
10 400 E. Van Buren St., Ste. 1900
11 Phoenix, AZ 85004-2202
12 sjerome@swlaw.com
ewagner@swlaw.com
Attorneys for Triple B Corporation
d/b/a Charlie's Produce

13 Jason M. Torf
14 John C. Cannizzaro
15 ICE MILLER LLP
16 200 West Madison Street
17 Suite 3500
18 Chicago, IL 60606-3417
Jason.Torf@icemiller.com
Counsel for Gordon Food Service Inc.

19 By: /s/Elizabeth Luna

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23
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25
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